

BEFORE THE KANSAS WORKERS COMPENSATION BOARD

CHARLES LINDSAY
Claimant

V.

RANDY VILELA TRUCKING
Respondent

and

NATIONWIDE MUTUAL INSURANCE
Insurance Carrier

and

CONTINENTAL WESTERN INSURANCE CO.

and

THE KANAS WORKERS COMPENSATION FUND
Insurance Carrier

Docket No. 1,031,031

ORDER

Claimant requests review of the April 21, 2015, Order Nunc Pro Tunc¹ entered by Administrative Law Judge (ALJ) Brad E. Avery.

APPEARANCES

Claimant appears *pro se*. William L. Phalen, of Pittsburg, Kansas, appears as claimant's previous counsel and an interested party. Troy A. Unruh, of Pittsburg, Kansas, appears for respondent. Blake Hudson, of Pittsburg, Kansas, appears for Nationwide Mutual Insurance Co. Ronald J. Laskowski of Topeka, Kansas appears for Continental Western Insurance Co. John C. Nodgaard of Wichita, Kansas appears for the Kansas Workers Compensation Fund.

FINDINGS AND ANALYSIS

On March 23, 2015, claimant filed a motion requesting the ALJ recuse himself. A hearing was held on the motion on April 6, 2015, and on April 21, 2015, the ALJ entered

¹ The ALJ's Order states: "The nunc pro tunc order was issued to correct a typographical error on p. 2, appearing in all caps." ALJ Order (April 21, 2015) at 1.

a Nunc Pro Tunc Order denying claimant's motion. On May 8, 2015, claimant filed a request with the Board to review Judge Avery's Nunc Pro Tunc Order.

Pursuant to K.S.A. 2013 Supp. 44-523(e)(1), when an ALJ refuses "to disqualify the administrative law judge's self, the party seeking a change of administrative law judge may, within 10 days of the refusal, file an appeal with the workers compensation appeals board." Pursuant to K.S.A. 2013 Supp. 44-551(l)(1), "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the workers compensation appeals board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation."

The ALJ's Nunc Pro Tunc Order was dated April 21, 2015. Pursuant to K.A.R. 51-18-2(a), the effective date of the Order was the day following the date noted on the Order, or April 22, 2015. The first day of the 10-day appeal time was April 23, 2015, and last day of the appeal time was May 6, 2015. Claimant's request for Board review was not filed until May 8, 2015. Because claimant's request for review was untimely filed, the Board has no authority to review Judge Avery's Order and claimant's appeal must be dismissed for lack of jurisdiction.

CONCLUSION

WHEREFORE, claimant's request for Board review was not timely filed and the request is therefore dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of July, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Brad E. Avery, Administrative Law Judge